

REMARKS

Claims 1-20 are all the claims pending in the application.

As an initial matter, Applicant respectfully submits that the subject matter of present Claim 1 (prior to amendment) is patentable. Claim 1 has been amended herein solely to preclude any issue of statutory "same invention" type double patenting over Claim 1 of U.S. Patent No. 6,600,646 to Naito.

The amendment to Claim 1 finds support at page 2, lines 13-15, and in the data for Examples 7-11 presented at Table 1, page 15 of the specification, as follows.

The fundamental factual inquiry with respect to whether an amended claim is adequately supported by the application as filed is whether the amended claim defines an invention that was clearly conveyed to those skilled in the art at the time the application was filed. Ralston Purina Co. v. Far-Mar-Co., Inc., 227 USPQ 177, 179 (Fed. Cir. 1985). The subject matter of the amended claim need not be described literally, *i.e.*, using the same terms or *in haec verba*, in order for the disclosure to satisfy the description requirement. MPEP §2163.02.

The claimed niobium powder having a CV value of at least 89,600 (CV/g) was clearly conveyed to a person of ordinary skill in the art at the time the application was filed. In particular, the recited range can be calculated from the following formula given at page 2 of the specification:

Specific LC (leakage current) index = $[LC/C \times V]$, wherein LC is
leakage current, C is capacitance, and V is formation voltage.

Thus, the CV value ($C \times V$) is equal to $LC/(\text{specific LC index})$.

The specific LC index values for the Example set forth at Table 1, page 15, of the specification were calculated from the measured values of "LC" and "CV value." Although the CV values of niobium powders as measured for the Examples are not given in Table 1, they can be calculated by applying the above formula to the "specific LC indexes [$\text{pA}/(\mu\text{F}\cdot\text{V})$]" and "LC values [μA]" results presented in Table 1 at page 15. The calculated CV values for each Example are as follows:

AMENDMENT UNDER 37 CFR 1.116
U.S. Appln. No. 10/043,102

	<u>CV/g</u>
Comparative Example 1	45,000
Example 1	45,400
Example 2	44,800
Example 3	44,000
Comparative Example 2	44,400
Comparative Example 3	44,200
Comparative Example 4	34,800
Comparative Example 5	34,600
Comparative Example 6	35,000
Example 4	62,000
Example 5	61,600
Example 6	61,200
Example 7	90,000
Example 8	89,600
Example 9	90,800
Example 10	118,000
Example 11	194,000

Accordingly, the amendment to Claim 1 is supported by (and encompasses) Examples 7-11. The larger the CV value, the more preferable the niobium powder.

The final Action mailed October 1, 2003, contains a single rejection. That is, Claims 1-3 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 4,954,169 to Behrens in view of U.S. Patent No. 6,051,044 to Fife.

Applicant respectfully traverses.

As mentioned above, the subject matter of original Claim 1 (prior to amendment) is patentable. As shown in the Response and Rule 132 Declaration filed on June 30, 2003, there is no motivation to combine Behrens and Fife, based in part on the disclosure at column 1, lines 9-35 of Fife. Furthermore, the superior results achieved by the claimed invention are unexpected from the combination of Behrens and Fife. The Rule 132 Declaration shows that it is important for the amount of cobalt and silicon not to exceed 100 ppm by weight in a niobium powder in order to provide electrolytic capacitors having reduced leakage, which feature of the invention is not disclosed or contemplated by the prior art relied upon by the Examiner.

In addition, although not necessary for patentability over Behrens and Fife, the cited references also do not disclose or suggest the recited CV value range of amended Claim 1. The CV values of tantalum powders in the Examples of Behrens (Table 4, columns 7 and 8) are shown below as follows.

	<u>CV/g</u>
Example 1	25,500
Example 2	28,500
Example 3	30,000
Example 4	28,500
Example 5	26,000
Comparative Example	22,500

The CV values of niobium powder disclosed in Fife are in the range of "30,000 CV/g to about 61,000 CV/g." Column 6, lines 64-67. As is understood from Fig. 1 to Fig. 4 of Fife, there is a maximal value for the CV values of niobium powder. Fife does not at all suggest a CV value exceeding about 61,000 CV/g.

AMENDMENT *UNDER 37 CFR 1.116*
U.S. Appln. No. 10/043,102

For the foregoing reasons, Applicant respectfully requests the reconsideration and withdrawal of the §103 rejection.

Reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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